



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 82-2

July 1, 1982

- Personal Income Tax
Non-Resident Individual

A question has been raised concerning the income tax treatment under Delaware law of cash payments received by a non-resident individual from his Delaware employer in lieu of accrued vacation subsequent to his retirement from employment. Specifically, the taxpayer, a Pennsylvania resident working in Delaware, retired on December 31, 1980, and on January 2, 1981, received a cash payment in lieu of accrued vacation to which he was entitled.

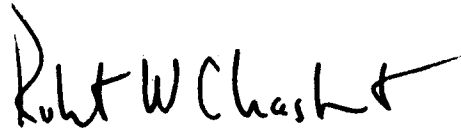
Section 1121, 30 Del. C., provides, in general, that the taxable income of a non-resident individual consists of that portion of his federal adjusted gross income which is derived from sources within Delaware. Section 1122 (b), 30 Del. C., provides that items of income, gain, loss and deduction derived from, or connected with, sources within this state are those items attributable to:

"(1) Compensation, other than pensions, as an employee in the conduct of the business of his employer, for personal services (i) rendered in this state, or (ii) attributable to employment in this state and not required to be performed elsewhere; ..."

It is well settled that vacation pay and cash payments in lieu of accrued vacation constitute compensation for personal services includible in taxable income. The issue presented is whether the fact that the payments were received by a non-resident after his retirement from employment in this state constitute income derived from Delaware sources.

It is the position of the Division of Revenue that cash payments in lieu of accrued vacation received by a non-resident employee from his Delaware employer constitute taxable income from Delaware sources whether received prior to or after retirement from employment. Such payments received during employment represent compensation for personal services rendered

in this state; such payments received after retirement represent compensation for personal services attributable to employment in this state not required to be performed elsewhere. Similarly, cash payments received in lieu of accrued sick leave would also constitute income from Delaware sources.

A handwritten signature in black ink, appearing to read "Robert W. Chasant", with a stylized flourish at the end.

Robert W. Chasant
Director of Revenue

RRS/mrs